



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0166; FRL-9655-6]

Approval and Promulgation of Implementation Plans; State of Florida: New Source Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP) through the Division of Air Resource Management to EPA in two separate SIP revisions on October 19, 2007, and July 1, 2011. These SIP revisions modify Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to address requirements promulgated in the 1997 8-hour ozone national ambient air quality standards (NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the "Ozone Implementation NSR Update" or "Phase II Rule") recognizing nitrogen oxide (NO_x) as an ozone precursor, among other requirements. In addition, both SIP revisions make corrective and clarifying changes to Florida's regulations. EPA is proposing approval of both SIP revisions because the Agency has preliminarily determined that the changes are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0166, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: benjamin.lynorae@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2012-0166, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2012-0166." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth

Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-9214; e-mail address: adams.yolanda@epa.gov. For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9029; e-mail address: spann.jane@epa.gov.

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I. What Action is EPA Proposing?

On October 19, 2007, and July 1, 2011, FDEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for NSR permitting promulgated in the Phase II Rule. Florida's October 19, 2007, SIP revision makes changes to the State's Air Quality Regulations at Chapter 62-210, Florida Administrative Code (F.A.C.), *Stationary Sources – General Requirements, Section 200 – Definitions (rule 62-210.200)*, and Chapter 62-212, F.A.C., *Stationary Sources – Preconstruction Review, Section 400 - Prevention of Significant Deterioration (rule 62-210.400)*. Florida's July 1, 2011,¹ SIP revision also makes changes at Chapter 62-210, F.A.C., to adopt PSD provisions promulgated in the Phase II Rule. Specifically, both SIP revisions propose to amend the State's PSD regulations to establish that PSD permit applicants must identify NOx as an ozone precursor as established in the Phase II Rule. Lastly, both SIP revisions make corrective and clarifying changes to Florida's rules at Chapters 62-210 and 62-212, F.A.C. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Florida SIP.

Florida's October 19, 2007, SIP submission also made changes to rule 62-212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's subsequent July 1, 2011, SIP revision made further revisions to this public participation provision, EPA is not taking action to approve Florida's October 19, 2007, revision

¹ Florida's July 1, 2011, revision also makes additional changes to Chapters 62-210, 212 and 296, F.A.C. which will be addressed in a separate rulemaking.

to rule 62-212.400(11), F.A.C. Instead, EPA is proposing to approve the revisions to rule 62-212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

II. What is the Background for EPA's Proposed Action?

A. What is the NSR Program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is comprised of three separate programs: PSD, nonattainment NSR (NNSR), and minor NSR. PSD is established in Part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR program is established in Part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The minor NSR program addresses construction or modification activities that do not qualify as “major” and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 CFR 51.160 through .166; 40 CFR 52.21 through .24; and, part 51, appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. *See* CAA section 110, 42 U.S.C.

7410. Pursuant to section 110(a)(2)(C) of the CAA , each SIP is required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS.

B. What are the NSR Requirements for the Phase II Rule?

Today's proposed action on the Florida SIP relates to EPA's Phase II Rule. *See* 70 FR 71612 (November 29, 2005). On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million – also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS – also known as the Phase II Rule (70 FR 71612). The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. The Phase II Rule requirements include, among other changes, a provision stating that NO_x is an ozone precursor. *See* 70 FR 71612, 71679. In the Phase II Rule,

EPA stated as follows:

“The EPA has recognized NO_x as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA’s recognition of NO_x as an ozone precursor is supported by scientific studies, which have long recognized the role of NO_x in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO_x should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO_x is an ozone precursor in attainment areas.”

The Phase II Rule made changes to federal regulations at 40 CFR 51.165 and 51.166 (which governs the NNSR and PSD permitting programs respectively). The changes made to the PSD federal regulations at 40 CFR 52.21 recognizing NO_x as an ozone precursor included changes to the definitions for “*major stationary source*” (40 CFR 52.21(b)(1)), “*major modification*” (40 CFR 52.21(b)(2)), “*significant*” (for significant emissions rate) (at 40 CFR 52.21(b)(23)(i)), “*regulated NSR pollutant*” (40 CFR 52.21(b)(50)), and the addition of a footnote at 40 CFR 52.21(i)(5)(i)(f) establishing the requirement for ambient air impact analysis. The Phase II rule also made other revisions to the NSR program; however, only the addition of NO_x as a precursor for ozone is relevant to today’s action.

Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase II Rule (at 40 CFR 51.165, 51.166 and 52.21) into their SIP no later than June 15, 2007. On October 19, 2007, and July 1, 2011, Florida submitted SIP revisions (the subject of this action) to adopt the relevant PSD provisions at 40 CFR 52.21 into the Florida SIP to be consistent with federal regulations for NSR permitting purposes promulgated in the Phase II Rule.

III. What is EPA's Analysis of Florida's SIP Revisions?

Florida currently has a SIP-approved NSR program for new and modified stationary sources. FDEP's PSD related definitions and preconstruction rules are found at 62-210.200, F.A.C, and 62-212.400, F.A.C. These rules apply to major stationary sources or modifications constructed in areas designated attainment as required under Part C of title I of the CAA with respect to the NAAQS. The current changes to Chapters 62-210, F.A.C., and 62-212, F.A.C., which EPA is now proposing to approve into the Florida SIP, were submitted to update the existing Florida regulations to be consistent with the federal PSD requirements, promulgated in the Phase II Rule.

Florida's October 19, 2007, SIP revision, which became state effective July 16, 2007, revised Chapters 62-210, F.A.C., and 62-212, F.A.C., to establish NO_x as an ozone precursor in the Florida SIP. Specifically for rule 62-210.200, F.A.C., the SIP revision changed the definitions for "major stationary source," "significant emissions rate" (or "significant" at 40 CFR 52.21(b)(23)(i)), and "PSD pollutant"² (Florida's equivalent to the federal term "regulated NSR

² On, June 27, 2008 (73 FR 36435), EPA took final action to approve a February 3, 2006, Florida SIP revision to

pollutant” at 40 CFR 52.21 (b)(50)) to include the term “nitrogen oxides.” Florida defines “PSD Pollutant” at rule 62-210.200, F.A.C., as “any pollutant listed as having a significant emissions rate. Florida’s October 19, 2007, SIP revision (the subject of this action) amends the definition of “significant emissions rate” to adopt the Phase II Rule provisions by listing NOx for the pollutant “ozone.” In doing so, Florida’s definition of “PSD pollutant” is also amended to establish NOx as an ozone precursor. The changes at rule 62-212.400, F.A.C., also addressed the inclusion of “nitrogen oxides” in the footnote at 62-212.400(3)(e) i.e., (as amended at 40 CFR 52.21 (i)(5)(i)(f)) regarding air quality level for ozone. The rule at 40 CFR 52.21(i)(5)(i)(f) establishes that there is no de minimis air quality level for ozone, however any source subject to PSD with a net increase of 100 tons per year or more of volatile organic compounds or NOx is required to perform an ambient impact analysis. Florida’s October 19, 2007, SIP revision also makes clarifying and corrective changes to rule 62-212.400, F.A.C. First, FDEP amends the subsection entitled “General Prohibitions” at rule 62-212.400(1) by replacing the term “Prohibitions” with the term “Provisions.” Second, FDEP includes language at rule 62-212.400(1)(c) and 62-212.720 – *Actuals Plantwide Applicability Limits (PALs)*, to clarify that the term “Administrator” in 40 CFR 52.21 shall mean “Department” when applying the portions of the federal rule cited from within the FDEP rules.

adopt the provisions promulgated in the 2002 NSR Reform Rule. *See* 67 FR 80186. In the June 27, 2008, final rulemaking, EPA approved Florida’s definition of “PSD Pollutant” as an equivalent to the federal term “regulated NSR pollutant” into the Florida SIP. As part of its February 3, 2006, SIP revision to adopt the NSR Reform provisions, Florida provided an equivalency demonstration that addressed how the State’s definition of “PSD pollutant” was comparable to the federal term “regulated NSR pollutant.” EPA’s June 27, 2008, rulemaking also conditionally approved portions of Florida’s PSD program that were not consistent with federal PSD regulations (including the definition for significant emissions rate). On June 17, 2009, in response to the conditional approval FDEP submitted a SIP revision to revise portions of its PSD program to be consistent with the federal PSD regulations. EPA took final action to approve this revision on April 12, 2011, which converted the State’s PSD program from conditional to full approval. *See* 76 FR 20239.

Florida's July 1, 2011, SIP revision, which became state effective October 12, 2008, revised the definition for "major modification" to be consistent with the definition promulgated in the Phase II Rule to include NO_x as an ozone precursor. In addition, the July 1, 2011, SIP revision corrected an administrative error in the definition of "major modification" by replacing the term "PSD pollutant" with "regulated air pollutant" at rule 62-210.200(186)(d), F.A.C. Lastly, the July 1, 2011, SIP revision revises the public participation provision at 62-212.400(11), F.A.C., to clarify that the applicable public notice and participation provisions can be found at 62-210.350, F.A.C., and 62-110.106, F.A.C., to satisfy the federal public participation requirements. As described earlier, Florida's October 19, 2007, SIP submission also made changes to rule 62-212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, Florida's July 1, 2011, SIP revision made further changes to the public participation provision at rule 62-212.400(11), F.A.C., and therefore, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62-212.400(11), F.A.C. Instead, EPA is proposing to approve the revision to rule 62-212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

As part of its review of the Florida SIP revisions, EPA performed a line-by-line review of the proposed SIP revisions including the provision that may differ from the federal rules, and determined that they are consistent with the program requirements for NSR, set forth at 40 CFR 51.166. States may meet the requirements of 40 CFR Part 51 and the Phase II Rules with alternative but equivalent regulations.

IV. Proposed Action

EPA is proposing to approve Florida's October 19, 2007, and July 1, 2011, SIP revisions adopting federal regulations amended in the Phase II Rule recognizing NO_x as an ozone precursor into the Florida SIP and making clarifying and corrective changes at Chapters 62-210 and 62-212, F.A.C. EPA has made the preliminary determination that these SIP revisions are approvable because it is in accordance with the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Oxides of nitrogen, Recordkeeping and reporting, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 23, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

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